

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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FAFARD REAL ESTATE &	)	
DEVELOPMENT CORP.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 04-11531-RGS
	)	
METRO-BOSTON BROADCASTING,	)	
INC.,	)	
	)	
Defendant,	)	
	)	

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CORRECTION TO DEFENDANT'S MOTION TO DISSOLVE  
LIS PENDENS, OR, IN THE ALTERNATIVE, FOR RECONSIDERATION

In defendant's motion to dissolve lis pendens, or in the alternative, for reconsideration, defendant made a statement about a landowner's right to a hearing before a lis pendens memorandum is endorsed. After filing the motion, the defendant realized that the statement requires clarification.

The lis pendens statute expressly grants a defendant landowner the right to a hearing on a motion to dissolve a lis pendens if the lis pendens memorandum was endorsed *ex parte*. G.L. c. 184 § 15 (c). Typically, *ex parte* means without notice to the opponent or opportunity for the opponent to be heard. Although the statute does not expressly state whether a hearing is required if the plaintiff serves a copy of the motion on the landowner and does not request an *ex parte* ruling, the intent of the statute is that the landowner will have the opportunity to be heard at some point, either "at the time the claimant first applied for a judicial endorsement under subsection (b)," G.L. c. 184, § 15(c), or on a motion to dissolve the lis pendens "[i]f the memorandum is approved *ex parte*." *Id.*

The statement in defendant's motion to dissolve – that "the lis pendens statute gives defendant the right to a hearing before a lis pendens memorandum is endorsed and recorded against defendant's property" – is inaccurate. It should have read, "the lis pendens statute contemplates a hearing before a lis pendens memorandum is endorsed and recorded against defendant's property, unless the judicial endorsement is made ex parte, in which event the landowner is entitled to a prompt hearing on a motion to dissolve the lis pendens."

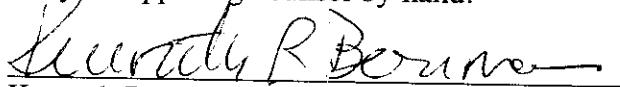
METRO-BOSTON BROADCASTING, INC.  
By its attorneys,

  
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August 25, 2004

Certificate Of Service

       I certify that I served this document today on opposing counsel by hand.

  
Kenneth R. Berman

August 25, 2004